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**MAILED**

**OCT 25 2010**

**OFFICE OF PETITIONS**

**ON PETITION**

In re Patent No. RE38,787 :  
Issued: August 30, 2005 :  
Reissue of Patent No. 5,761,621 :  
Issued: June 2, 1998 :  
Application No. 09/392,676 :  
Filed: September 8, 1999 :  
Attorney Docket No. 740301-411 :

This is a decision on the petition, filed June 10, 2010, which is being treated under 37 CFR 1.377 as a petition to accept and record the 11 ½ year maintenance fee for the above-identified patent.

The petition is **dismissed**.

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted.

The patent upon which the above-identified reissue patent was based, Patent No. 5,761,621, issued on June 2, 1998. The first maintenance fee (3 ½ year) on Patent No. 5,761,621 was paid timely on November 6, 2001. On August 30, 2005, Reissue Patent No. RE38,787 was issued. The time table for payment of maintenance fees for a reissue patent is the same as the time table for payment of the original patent upon which the reissue patent was based. The second maintenance fee (7 ½ year) on Reissue Patent No. RE38,787 was paid timely on November 11, 2005.

As explained in the NOTICE OF NON-ACCEPTANCE OF PATENT MAINTENANCE FEE, mailed June 4, 2010, the Office received a credit card authorization to charge the 11 ½ year maintenance fee and surcharge for RE38,787 on June 2, 2010. However, the Office did not accept the payment because the Office erroneously asserted the above-identified patent was reissued.

The Office should have accepted the timely paid 11 ½ year maintenance fee and surcharge for RE38,787 because it was never surrendered.

Unfortunately, the two new Credit Card Payment Forms (Form PTO-2038) submitted with the present petition were redacted before payment was collected. The petition cannot be granted until the Office receives the \$4,110.00 11 ½ year maintenance fee, the \$130.00 grace period

surcharge, and the \$200.00 petition fee. Petitioner's request for refund of the petition fee in the present petition is noted and will be acted upon once payment is received.

Further correspondence with respect to this matter should be delivered through one of the following mediums:


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Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3230.

  
Shirene Willis Brantley  
Senior Petitions Attorney  
Office of Petitions